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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/649,702	08/28/2003	Yasuhiro Akiyama	501.43083X00	6753
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MATTINGLY, STANGER, MALUR & BRUNDIDGE, P.C. 1800 DIAGONAL ROAD SUITE 370 ALEXANDRIA, VA 22314			EXAMINER GREY, CHRISTOPHER P	
			ART UNIT 2616	PAPER NUMBER
			MAIL DATE 12/26/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/649,702

Applicant(s)

AKIYAMA ET AL.

Examiner

Christopher P. Grey

Art Unit

2616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 September 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5-10 and 13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-10 and 13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**Detailed Action**

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1-3 and 5-10 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Patel et al. (US 6731600), hereinafter referred to as Patel, in view of Fichou et al. (US 6690646), hereinafter referred to as Fichou.

**Claim 1** Patel discloses an input unit for image data (Col 5 lines 46-54, server computer maintains and stores data objects of any type, where the memory needed for storage is equivalent to an input).

Patel discloses an image reconstruction unit (fig 4, 426 to 404, where whatever unit within the server computer that accepts and processes the transmission bandwidth for adjustment, is equivalent to reconstructing the image data, as a change of the data rate of the image data is equivalent to reconstruction);

Patel discloses a communications unit (fig 4, where the server computer is in communication with the client computer, thus any component within the server computer used for communication is equivalent to a communication unit) connected to a terminal (fig 4, client computer); and generating a monitoring trigger information with which said terminal performs a receiving bit rate monitoring (fig 4, 404, server computer generated a first packet containing information that initiate monitoring information, Col 10, lines 5-25 and Col 10

**lines 42-52, where the identifiers added to the packets indicate first and second packets which are used for monitoring in the client computer).**

Patel discloses said monitoring trigger information generating unit inserting the generated monitoring trigger into image data inputted through said input unit and outputs it to said terminal through said communication unit **(Col 10 lines 5-25, where the identifier is inserted in the header).**

Patel discloses wherein said communication unit outputs a data fragment, which includes said image data, said monitoring trigger **(Col 10 lines 5-25, where the identifier is inserted in the header).**

Patel also discloses detecting a completion of said receiving bit rate monitoring by burst transfer every data fragment **(Col 13 lines 1-7, wherein monitoring occurs until the entire object is received. Also, within the cited paragraph, Patel teaches that monitoring can occur at a percentage of transmission of the data object, such as per fragment as claimed).**

Patel does not specifically disclose a data fragment which includes data size information for detecting the completion of monitoring.

Fichou discloses a data fragment which includes data size information **(Col 9 lines 42-44, extracting a size from the header)** for detecting the completion of monitoring **(fig 5, 515, where it is determined that the monitoring period has ended, however, Patel has already taught that a time interval may be replaced with a size or percentage of transmission as discussed above).**

It would have been obvious to one of the ordinary skill in the art at the time of the invention to combine within the method of monitoring as disclosed by Patel, a method for

extracting a size from the header of the received data as disclosed by Fichou. The motivation for this combination is to determine at what point monitoring is ended or should be ended as seen in fig 5.

**Claim 2** Patel discloses a bit rate switching control unit for feeding said image data to said terminal (**fig 4, 404 and 408, the unit used for the transmission of data as in 404 and 408 is equivalent to the control unit**), and when said communication unit receives an image bit rate request command from from said receiving terminal (**fig 4, 426, server computer receives calculated transmission bandwidth from client/receiving computer**), said image reconstruction unit switches the image bit rate to an image bit rate specified by said command to deliver the image data (**Col 12 lines 1-3, the unit being used to adjust the transmission rate in the server is equivalent to the reconstruction unit**).

**Claim 3, 4** Patel discloses wherein as said monitoring trigger, a transmission start time for a data fragment to be transmitted next is inserted into image data to be distributed (**Col 8 lines 14-16, subsequent timestamps and fig 3, 312**).

Patel does not specifically disclose an extension part of the image data, however, it would have been obvious to one of the ordinary skill in the art at the time of the invention that the dedicated portion of the data where the timestamp is inserted is equivalent to an extension because without the insertion of the timestamp that dedicated portion is unnecessary. The motivation for this extension is to transmit timestamp information at predetermined intervals (**Col 9 lines 30-35**).

**Claim 5** Patel discloses a communication unit connected to a distribution server (**fig 1, 110, server**).

Patel discloses wherein said communication unit outputs a data fragment, which includes said image data, said monitoring trigger(**Col 10 lines 5-25, where the identifier is inserted in the header**).

Patel discloses a reproducing unit for reproducing received image data (**fig 2, 202, and Col 6 lines 1-3, displaying the object to the user is equivalent to reproducing**).

Patel discloses a monitoring unit for monitoring a receiving bit rate of said received image data (**fig 2 206**).

Patel discloses an analysis unit for analyzing said received image data .

Patel discloses said analysis unit extracts a monitoring trigger from said image data (**Col 10 lines 42-52, where examination of the header is equivalent to analysis, and examining the header to make a determination is equivalent to extracting the given information, where extraction in its broadest sense is defined as to obtain or deduce**).

Patel discloses said monitoring unit performs said monitoring through utilization of said monitoring trigger (**Col 10 lines 42-52, where after the determination of the header information is made, a monitoring procedure is initiated**).

Patel discloses said monitoring unit feeds the distribution bit rate switching information of said image data through said communication unit in response to said receiving bit rate to be monitored (**fig 4, 426 and Col 12 lines 1-3**).

Patel discloses a monitoring unit starting said monitoring from a receiving start time of a next data fragment received as specified by said monitoring trigger (**Col 10 lines 5-25, where**

**the packet ID identifies that a next packet was transmitted at a time immediately after the first or current packet).**

Patel discloses finishing said monitoring upon completion of the receipt of data of a fragment size and calculating a receiving bit rate **(Col 13 lines 1-8, monitoring the available bandwidth data/sec until the entire data object is transmitted).**

Patel does not specifically disclose the data fragment including data size information. Patel also disclose not specifically disclose the fragment being specified in said data size information.

Fichou discloses the data fragment including data size information **(Col 9 lines 42-44, size PS is extracted from the header, where the size PS is equivalent to a fragment size as the term fragment is not clearly defined within the claim and is open to broad interpretation).**

It would have been obvious to one of the ordinary skill in the art at the time of the invention to combine within the method of monitoring as disclosed by Patel, a method for extracting a size from the header of the received data as disclosed by Fichou. The motivation for this combination is to determine at what point monitoring is ended or should be ended as seen in fig 5.

**Claim 6** Patel discloses a timer for counting time **(fig 3, wherein the client computer measures a base time and makes reference to a clock).**

Patel discloses wherein said monitoring unit compares the time of said timer with said receiving start time of the next data fragment specified by said monitoring trigger (fig 4, 412,

where the time of the completion of receipt of first packet is equivalent to the start time specified by monitoring trigger, as the monitoring trigger specifies that the next packet is a back to back packet immediately following the first packet) and starts said monitoring of the receiving bit rate from said receiving start time (**fig 4, 422 where a bandwidth is calculated/monitored**).

**Claim 7,8,9,10** Patel discloses wherein said monitoring unit compares a measured receiving bit rate (Col 11 lines 28-29, current bandwidth) with a bit rate switching condition recorder in a recording unit and feeds said bit rate switching information in response to a result of said comparison (**Col 11 line 62-Col 12 line 3, wherein Patel discloses adjusting a transmission rate based on a comparison of current bandwidth with some form of threshold that defines whether or not a bandwidth is too high or too low, where this threshold is stored within the software disclosed in the citation**).

**Claim 10** Patel discloses a display unit for displaying said received image data (**fig 1 teaches client and server computers, where within the art it is common for these computers to have a monitor of some sort for display**).

Patel discloses an input instruction unit for receiving an input from a user. Patel discloses wherein an instruction for changing a bit rate through said input instruction unit in regard to the image data displayed at said display unit being received and said instruction being fed as said switching information (**Col 12 lines 1-3, where Patel teaches adjusting or switching a transmission rate via a software**



**component. However, one skilled on the art can appreciate that if it can be implemented in software, it also can be implemented by a user inputting information, which is nothing new within the art).**

### **Response to arguments**

2. The applicants arguments filed on September 25, 2007 are moot in view of the new grounds of rejection.

Furthermore, as pertains to the applicants arguments that the examiner has failed to acknowledge the preliminary amendments, the examiner acknowledges these amendments, and notes that the preliminary amendments are merely gramatical changes, and do not effect the rejection of the claims.

### ***Conclusion***

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher P. Grey whose telephone number is (571)272-3160. The examiner can normally be reached on 10AM-7:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Doris To can be reached on (571)272-7629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Christopher Grey  
Examiner  
ART UNIT 2616

C. Grey  
12/21/07

  
DORIS H. TO  
SUPERVISOR  
TECHNOLOGY CENTER 2600